

46 Am. Jur. 2d Judges § 72

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Judges

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VIII. Liabilities

A. Civil Liability

2. Liability for Particular Types of Conduct

b. Conduct Within Scope of Other Types of Immunity

§ 72. Legislative and prosecutorial acts of judge as subject to immunity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  35, 36

While the courts generally have not applied judicial immunity to administrative, legislative, or executive functions,¹ judges may be entitled to a different type of immunity when performing in a nonjudicial capacity. In this regard, judges who act in a legislative capacity are entitled to legislative rather than judicial immunity from suits based on their actions² when they promulgate rules,³ such as a code of conduct for attorneys⁴ or mandatory bar membership dues reduction rules,⁵ and those who enforce a code of conduct are entitled to prosecutorial immunity.⁶

CUMULATIVE SUPPLEMENT

Cases:

State supreme court justices were not entitled to absolute legislative immunity from suit seeking declaratory and injunctive relief, in attorney's action alleging violation of the First Amendment rights to free speech and association, arising from state's requirement that attorneys join and pay dues to state bar association and the association's use of attorneys' mandatory dues, even though legislative immunity applied to justice's actions taken in enacting rules governing practice of law in state; justices also acted in an enforcement capacity, in addition to a legislative capacity. [U.S. Const. Amend. 1. Schell v. Gurich, 409 F. Supp. 3d 1290 \(W.D. Okla. 2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 § 67.
- 2 *Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988).
- 3 *Giannini v. Real*, 711 F. Supp. 992, 15 Fed. R. Serv. 3d 559 (C.D. Cal. 1989), judgment aff'd, 911 F.2d 354 (9th Cir. 1990).
- 4 *Berger v. Cuyahoga County Bar Ass'n*, 983 F.2d 718 (6th Cir. 1993).
- 5 *Crosetto v. Heffernan*, 771 F. Supp. 224 (N.D. Ill. 1990).
- 6 *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 100 S. Ct. 1967, 64 L. Ed. 2d 641 (1980).
As to the immunity of prosecuting attorneys, generally, see *Am. Jur. 2d, Prosecuting Attorneys* §§ 4 to 6.

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